

April 30, 1998

Janet Gail Besser, Acting Chair
John D. Patrone, Commissioner
James Connelly, Commissioner
Department of Telecommunications and Energy
100 Cambridge Street, floor 12
Boston, MA 02202

RE: Massachusetts Gas Unbundling Collaborative - D.T.E. 98-32 Notice of Inquiry

Dear Commissioners:

The attached comments are from an inter-governmental Procurement Management Team (PMT) made up of energy users and other public sector staff with energy usage interests and / or procurement responsibilities, various state government departments, public authorities, municipalities, educational institutions, and other government entities which have chosen to assign members to this PMT. In large part, its responsibility is to develop and execute procurement strategies for the purchasing of energy supplies and services for the departments within the Executive Branch of Commonwealth State Government and to give other eligible entities access to the resulting contracts.

These comments reflect a majority vote taken within the Energy PMT and are the views of the Operational Services Division (OSD), as the contracting authority responsible for energy services for the executive branch of government.

Sincerely,

John F. McPartland
Procurement Team Leader
Energy Procurement Management Team
Operational Services Division

April 28, 1998

Janet Gail Besser, Acting Chair
 John D. Patrone, Commissioner
 James Connelly, Commissioner
 100 Cambridge Street, 12th Floor
 Boston, Massachusetts 02202

Re: Massachusetts Gas Unbundling Collaborative - D.T.E. 98-32 Notice of Inquiry

Dear Chair Besser, Commissioner Patrone, Commissioner Connelly:

This letter is submitted by the Energy Procurement Management Team, through the Operational Services Division of the Executive Office of Administration and Finance, Commonwealth of Massachusetts ("Energy PMT or Energy Team or Team") pursuant to the schedule for public comment adopted April 3, 1998 by the Department of Telecommunications and Energy (DTE, the Department) in the above-referenced proceeding.

The Energy PMT is the body charged (among other things) with acquiring energy supplies on behalf of Commonwealth Executive Branch Departments. Statewide contracts issued by the PMT are available to other eligible entities including, but not limited to, the Judicial and Legislative branches, the 351 Cities and Towns, and political subdivisions. Should they so choose, they may purchase off of such Statewide contracts.

In instituting the Collaborative proceeding last summer, the Department stated its "firm commitment" to move toward competitive gas and electric markets as a means for achieving its regulatory goal of ensuring that utilities provide safe and reliable service at the lowest possible cost to society. (*Comprehensive Unbundling of Natural Gas Local Distribution Companies' Services*, Order issued July 18, 1997, at 1). The Department set forth its anticipated objectives for the proceeding, stating (at 2) that a competitive gas market would, among other thing provide all customers with an opportunity to share in the benefits of increased competition and ensure full and fair competition in the gas supply market.

The PMT shares these broad goals. As a procurement entity, the PMT seeks to achieve the "best value" for the Commonwealth. Achieving that goal generally requires the PMT to harness, for the benefit of the Commonwealth as a purchaser, the competitive forces in the marketplace for the various products and services the Operational Services Division purchases. In the past, competitive alternatives have not generally been available for energy products and services. As that situation is now changing, however, the PMT generally supports the development and

implementation of regulatory initiatives that expand competitive supply options. The PMT therefore supports the Department's efforts to move to create real and meaningful competitive options in gas supply services.

The instant Notice of Inquiry proceeding has invited comment to a number of very detailed questions to aid the Department. In response to that invitation, the PMT respectfully urges the Department to bear in mind a few general principles as it proceeds.

1. *The need for appropriate safeguards to ensure competitive markets.*

The Department has called for comment on the merits and limitations of the portfolio auction process and in particular the issue of market power and the types of restrictions, if any, that should be placed on the winning bidder to address potential affiliate abuses. (D.T.E. Order of April 10, 1998, at 2). The PMT agrees that the Department should examine these competitive issues carefully. Clearly, the portfolio auction, to the extent it would allow for a single marketing concern to control most or all of the primary firm delivery capacity to a given market, raises a clear potential for possible anti-competitive activity by the winning bidder. Accordingly, the PMT would urge the Department to vet the proposal carefully for possible anti-competitive consequences. As part of that review, the Department should consider adopting explicit pro-competitive safeguards to protect customer interests. These safeguards might include:

- *"Capping" the percentage of primary firm delivery capacity to be auctioned to a given marketer.* The LDCs' proposal as currently drafted apparently does not preclude an LDC from auction 100 percent of its firm transportation capacity to a single marketing entity. By expressly limiting each winning bidder to a reasonable market share (perhaps 20 to 25 percent of the total primary firm delivery capacity for each LDC's service area), the Department could ensure customers the choice among competing city-gate merchants, while preserving the operational advantages of aggregating relatively large capacity portfolios.
- *Non-discriminatory supply obligation for small LDCs.* For the very small LDCs, it may not be feasible to limit capacity portfolios in this manner and still achieve operational benefits. In this case, if the Department decides to adopt a portfolio auction approach, it might be appropriate to impose an express non-discriminatory supply obligation on the winning bidder as a condition of the auction. The condition would require the winning marketer to offer to supply gas at the city gate to competing, retail, marketers under prices, terms and conditions that are no less favorable than those offered to the LDC. This may enable customers to gain at least some of the advantages of competition for retail service, while keeping the capacity portfolio large enough to allow the winning bidder to achieve the operational benefits of aggregation.

The adoption of reasonable pro-competitive safeguards such as those outlined above would go far to addressing the competitive concerns raised by the proposal in its present form.

2. *The need for "customer-friendly" tariffs.*

Tariff provisions should be clearly written, and should be fair and even-handed to customers. The draft model terms and conditions submitted in the March 18 Status Report still contain a number of provisions that do not meet this standard. A few examples include the following:

- Customers should not be required to continue to pay the LDC for service that the LDC does not provide, as would apparently be the case under the LDC's proposed tariff (§ 21.0 in the *LDC Draft Model Terms and Conditions* (hereafter *LDC Draft*)). Rather, customers should be excused from paying demand charges where contracted firm service is not being provided (as noted in the *Marketer Proposed Revisions to LDC Draft Model Terms and Conditions* (hereafter *Proposed Revisions*)).
- Similarly, the *LDC Draft* (§ 20.3) requires a customer to continue to pay demand charges for firm transportation service for as long as 60 days even when the LDC is unable to provide the service due to Force Majeure. In contrast, the *Proposed Revisions* argue in favor of "demand charge adjustments" or credits in such a case.¹ The PMT believes that customers ought not pay for service they do not receive.
- It is not equitable or even-handed to require the customer such as those the PMT represents to indemnify the LDC for any liability the LDC incurs as a result of the negligence or willful misconduct of the customer's agent without also imposing a comparable indemnity obligation on the LDC to make *the customer whole* for losses incurred as a result of the LDC's negligence or willful misconduct. Yet the wording of § 25.4 of the *LDC Draft Model Terms and Conditions* (*supra*, Page 25-1) is to require the customer to indemnify the LDC without imposing a comparable indemnity obligation on the LDC for its own negligence or willful misconduct.

3. *The importance of standardization of pricing, terms, and conditions.*

The PMT purchases gas services on a number of the LDCs around the Commonwealth. The lack of standardization in the pricing, terms and conditions of service make it more difficult for a multi-facility consumer such as those represented by the PMT to manage its procurement program and obtain best value for the Commonwealth. Accordingly, to the maximum practical the Department should seek to standardize terms and conditions affecting procurement decisions. The PMT supports, therefore the effort made thus far to create Model Terms and Conditions and urges the Department to continue to strive as a general matter for the standardization of basic operational terms and conditions.²

4. *The importance of minimizing price disparities across LDCs.*

enhanced or expanded operational flexibility to the extent that it is able to do so.

As a general matter, citizens using state services ought not to be advantaged or disadvantaged simply because of their location within the Commonwealth. Hence, the PMT would anticipate that in a competitive marketplace for gas, the price of comparable supplies should be generally fall within a very narrow range throughout the Commonwealth (except, of course, where there are cost-justified variations in distribution costs) Other things being